

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

WESLEY POLLARD, SR.,)
Plaintiff,)
v.)
SUPERINTENDENT MICHAEL)
CLARK, et al.,)
Defendants.)
)

) C.A. No. 20-194 Erie
District Judge Susan Paradise Baxter
Magistrate Judge Richard A. Lanzillo

MEMORANDUM ORDER

Plaintiff Wesley Pollard, Sr., an inmate incarcerated at the State Correctional Institution at Albion, Pennsylvania, commenced this action by filing a *pro se* civil rights complaint accompanied by a motion for leave to proceed *in forma pauperis* (“ifp motion”) [ECF No. 1], on July 10, 2020. Named as Defendants are thirteen employees of the Pennsylvania Department of Corrections, most of whom are employed at SCI-Albion. Plaintiff raises three claims: a First Amendment retaliation claim arising from his request for a “z code” to avoid having a cellmate; an Eighth Amendment claim objecting to his conditions of confinement; and a Fourteenth Amendment due process claim regarding his custody in the Restricted Housing Unit, the investigation of his grievances, and the alleged fabrication of his prison records. This matter was referred to United States Magistrate Judge Richard A. Lanzillo for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

On March 10, 2021, Defendants filed a motion to dismiss Plaintiff's complaint for failure to state a claim upon which relief may be granted [ECF No. 17], to which Plaintiff filed a brief in

opposition [ECF No. 24]. On November 4, 2021, Magistrate Judge Lanzillo issued a report and recommendation (“R&R”) recommending that Defendants’ motion to dismiss be granted and that each of Plaintiff’s claims be dismissed without prejudice to Plaintiff’s right to amend his complaint to allege additional facts sufficient to support each claim [ECF No. 27]. No timely objections have been filed.

After de novo review of the complaint and documents in this case, together with the report and recommendation, the following order is entered:

AND NOW, this 13th day of December, 2021;

IT IS HEREBY ORDERED that Defendants’ motion to dismiss Plaintiff’s complaint [ECF No. 17] is GRANTED, and Plaintiff’s complaint is DISMISSED, without prejudice to Plaintiff’s right to amend his complaint to allege sufficient facts to support each claim raised in his complaint. If he desires to do so, Plaintiff must file his amended complaint within thirty (30) days of the date of this Order. Plaintiff’s failure to file an amendment within such time shall result in dismissal of this action in its entirety, with prejudice, without further notice. The report and recommendation of Magistrate Judge Lanzillo, issued November 4, 2021 [ECF No. 27], is adopted as the opinion of the Court.



SUSAN PARADISE BAXTER
United States District Judge

cc: The Honorable Richard A. Lanzillo
U.S. Magistrate Judge

all parties of record